

No. 3903

IN THE

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**United States
Circuit Court
of Appeals**

FOR THE NINTH CIRCUIT

THE UNITED STATES OF AMERICA,
Plaintiff in Error,
v.
D. C. AUSTIN, *Defendant in Error.*

UPON WRIT OF ERROR TO THE UNITED
STATES DISTRICT COURT OF THE WEST-
ERN DISTRICT OF WASHINGTON,
NORTHERN DIVISION.

HON. EDWARD E. CUSHMAN, *Judge*

Brief of Defendant in Error

W. A. JOHNSON

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Brief of Defendant in Error

STATEMENT OF THE CASE

The plaintiff in error has correctly stated the facts. They are simply the pleadings in the case, and, about which, of course, there can be no dispute.

ARGUMENT.

We have read the plaintiff's brief with much interest and must congratulate counsel upon their

persistence and diligence. The ingenuity of the plaintiff's argument and the nature of the decisions cited in support, convince us that the plaintiff is hard pressed for a legitimate reason to present this case to the court and to fly in the face of *stare decisis*.

As a matter of fact, and to follow the plaintiff in going outside the record, we understand the Attorney General's department, for some reason, failed to perfect its appeal from this Court to the United States Supreme Court in the case of *United States v. Hana*, 276 Fed. 817, and, desiring to have this question passed upon by the highest tribunal in the land, has selected the defendant herein as its beast of burden to carry it thence.

A lengthy brief might be written by us on this subject but we would deem it impertinent to do so, in view of the elaborate and unanswerable opinion of this Court in the case of *United States v. Sischo*, 270 Fed. 958. To our minds the logic of the Court's reasoning in the above cited cases more than overcomes this latest effort of the plaintiff and we are content to rest thereon without further argument.

We, therefore, ask that the judgment of the lower Court be affirmed.

Respectfully submitted,

W. A. JOHNSON

GROSSCUP & MORROW,

Counsel for Defendant in Error.